



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0004]

RIN 1625-AA11

Regulated Navigation Area; Middle Waterway Superfund Cleanup
Site, Commencement Bay; Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area (RNA) on the Middle Waterway in Tacoma, Washington. The RNA will protect the sediment cap areas in the U.S. Environmental Protection Agency (EPA)'s Commencement Bay Nearshore/Tideflats (CB-NT) Superfund Cleanup Site in the Middle Waterway Problem Area. This regulated navigation area would prohibit activities that could disrupt the integrity of the engineered sediment caps that have been placed within the Middle Waterway Problem Area. These activities include vessel grounding, anchoring, dragging, trawling, spudding or other such activities that would disturb the integrity of the sediment

caps. It will not affect transit or navigation of this area or the existing industrial activities occurring in this area.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR

FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Johnny Zeng, Waterways Management Division, Sector Puget Sound, U.S. Coast Guard; telephone (206) 217-6175, e-mail SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax,

mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2015-0004] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number (USCG-2015-0004) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard received notice from the U.S. EPA requesting the establishment of a Regulated Navigation Area (RNA) for the Middle Waterway Problem Area of the CB-NT Superfund Cleanup Site in Tacoma, Washington. This request was received as a result of the need to protect the engineered sediment caps in the Middle Waterway from activities that could disrupt the integrity of the caps within the CB-NT Superfund Cleanup Site.

The CB-NT was added to the U.S. EPA's National Priorities List (Superfund) in September 1983 because of hazardous substance contamination in the sediment. The EPA selected the Middle Waterway Problem Area for remedial action, and subsequently cleanup activities were conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Remediation activities identified for the Middle Waterway included dredging, placement of enhanced natural recovery material, placement of caps, and natural recovery. The caps consist of approximately three feet of sand and gravel and light-loose riprap, and were placed in various locations within the waterway to contain the contaminated sediments. These caps were designed to withstand activities common to a working waterfront. The cap areas cover approximately two acres of sediment in the waterway.

Construction activities were initiated in July 2003 and completed in January 2005. A Remedial Action Completion Report documenting the cleanup activities was completed and approved by the U.S. EPA in April 2005.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C.1231 and Department of Homeland Security Delegation No. 0170.1. Coast Guard District Commanders are granted authority under 33 CFR 165.11 to regulate vessel traffic in areas with hazardous conditions. This rule is necessary to prevent disturbance of the sediment caps established in the Middle Waterway Problem Area of the CB-NT Superfund Cleanup Site. Disruption of the integrity of the caps may result in a hazardous condition and harm to the marine environment. As such, this RNA is necessary to protect the integrity of the caps and will do so by prohibiting maritime activities that could disturb or damage them. Enforcement of this RNA will be managed by Coast Guard Sector Puget Sound assets including Vessel Traffic Service Puget Sound through radar and closed circuit television sensors. The Captain of the Port Puget Sound may also be assisted by other state, local, or government agencies in the enforcement of this

rule.

D. Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent RNA on the Middle Waterway to protect the sediment caps in the Middle Waterway Problem Area of the CB-NT Superfund Site. It would do so by restricting vessel anchoring, dragging, trawling, spudding or other activities that could disrupt the integrity of the caps and the underlying contaminated sediments located in the proposed RNA. Activities common in the proposed regulated areas include tugboat and log-rafting activities, tugboat moorage, removal and launching of ships for repair, and other ship repair and maintenance activities. The cap areas were designed to be compatible with the activities described above that are associated with a working waterfront. The material used for the caps was chosen to be able to contain underlying sediments without altering the main activities of the working waterway.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This expectation is based on the fact that the RNA established by the rule would encompass a small area that should not impact commercial or recreational traffic, and the prohibited activities are not routine for the designated areas.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor, drag, dredge, trawl, spud, or disturb the riverbed in

any fashion when this rule is in effect. The RNA would not have a significant economic impact on small entities due to its small area and waiver process for legitimate use.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in FOR FURTHER INFORMATION CONTACT. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) .

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rulemaking does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State,

local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rulemaking elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The Coast Guard and EPA consulted with the Puyallup tribe in coming to this determination.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated navigation area which prevents activities which would disturb the riverbed within the areas outlined in this regulation. This

proposed rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

33 CFR Part 165

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1342 to subpart F under the undesignated center heading Thirteenth Coastguard District to read as follows:

§ 165.1342 Regulated Navigation Area; Middle Waterway Superfund
Cleanup Site, Commencement Bay; Tacoma, WA

(a) Regulated Areas. The following areas are regulated navigation areas: All waters within the Middle Waterway south of a line connecting a point on the shore at 47° 15' 51" N, 122° 25' 53" W; thence southwest to 47° 15' 47" N, 122° 25' 59" W [Datum: NAD 1983].

(b) Regulations. (1) All vessels and persons are prohibited from activities that would disturb the seabed, such as grounding, anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the caps within the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) in the Middle Waterway's EPA superfund cleanup site. Vessels may otherwise transit or navigate within this area in accordance with the Navigation Rules.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the Middle Waterway superfund sites, provided that the Captain of the Port, Puget Sound (COTP), is given advance notice of those activities by the EPA.

(c) Waivers. Upon written request stating the need and proposed conditions of the waiver, and any proposed precautionary

measures, the COTP may authorize a waiver from this section if the COTP determines that the activity for which the waiver is sought can take place without undue risk to the remediation

efforts described in paragraph (b)(1) of this section. The COTP will consult with EPA in making this determination when necessary and practicable.

Dated: June 22, 2015

R. T. Gromlich
Rear Admiral, U. S. Coast Guard
Commander, Thirteenth Coast Guard District

[FR Doc. 2015-17481 Filed: 7/16/2015 08:45 am; Publication Date:
7/17/2015]